



Federal Communications Commission  
Washington, D.C. 20554

APR 9 1998

EX PARTE OR LATE FILED

The Honorable John E. Sununu  
U. S. House of Representatives  
1229 Longworth House Office Building  
Washington, D.C. 20515

RECEIVED

APR 13 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Congressman Sununu:

Thank you for your letter dated November 13, 1997, on behalf of your constituents, Timothy J. Thompson of Rochester, New Hampshire, and Gossett McRae of Goffstown, New Hampshire, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in their communities. Your constituents' letters refer to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comment on a Petition for Further Notice of Proposed Rule Making filed by the National Association of Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comment on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, your constituents' letters, and this response will be placed in the record of all three proceedings and will be given full consideration.

At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



*for* Steven E. Weingarten  
Acting Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

cc: CWD

Dockets (2)

John Conwell

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JOHN E. SUNUNU

1ST DISTRICT, NEW HAMPSHIRE

COMMITTEE ON THE BUDGET

COMMITTEE ON GOVERNMENT  
REFORM AND OVERSIGHT

COMMITTEE ON SMALL BUSINESS

REPUBLICAN POLICY COMMITTEE



UNITED STATES  
HOUSE OF REPRESENTATIVES

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104 WASHINGTON STREET  
DOVER, NH 03820  
(603) 743-4813

35 CENTER STREET  
WOLFEBORO, NH 03896  
(603) 569-8927

MND  
97-182  
7219

November 13, 1997

Ms. Karen Kornbluh  
Director of Legislative and Intergovernmental Affairs  
Federal Communications Commission  
Room 808  
1919 M Street, N.W.  
Washington, DC 20554

Dear Ms. Kornbluh,

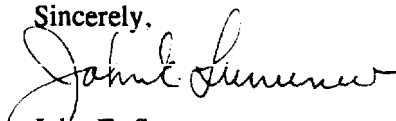
Enclosed are letters that I have recently received from communities within my district concerning the authority of the Federal Communications Commission (FCC) to preempt local zoning for cellular, radio, and TV towers.

Specifically, the communities raise issues pertaining to FCC's regulation of the radiation from cellular tower antennas; the FCC's proposed ruling that would ban the moratoria some municipalities have imposed while their zoning ordinances are under revision; and, the FCC's proposed rule that a municipality must respond to any permit request within 21-45 days, or the request is automatically deemed granted.

I would appreciate your review of these letters and your comments on the issues outlined by the communities.

Thank you for your time in this matter, and I look forward to your reply.

Sincerely,

  
John E. Sununu  
Member of Congress

Enclosures

JES/jjr

**PLANNING DEVELOPMENT AND ZONING DEPARTMENT**

City Hall - Second Floor

31 Wakefield Street

ROCHESTER, NEW HAMPSHIRE 03607-1917

(603) 335-1338

City Planning  
Community Development  
Economic Development  
Zoning Department

October 30, 1997

Senator Judd Gregg  
Senator Robert Smith  
Representative John Sununu

Dear Senator Gregg, Senator Smith, and Representative Sununu:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

**Cellular Towers - Radiation:** Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have "the exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even have to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on the other grounds, such as impact of the tower on property values or aesthetics.

**Cellular Towers - Moratoria:** Relatedly, the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.



## PLANNING DEVELOPMENT AND ZONING DEPARTMENT

City Hall - Second Floor

31 Wakefield Street

ROCHESTER, NEW HAMPSHIRE 03867-1917

(603) 335-1338

City Planning  
Community Development  
Economic Development  
Zoning Department

**Radio/TV Towers:** The FCC's proposed rule on radio and TV towers is as bad. It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is *automatically deemed granted* if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man - some over 2,000 feet tall. The FCC claims that these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchgott-Roth, Michael Powell, and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tobin at the National League of Cities (202-696-3194); Eileen Huggard at the National Association of Telecommunications Officers and Advisors (703-506-3275); Robert Fogel at the National Association of Counties (202-393-6226); Kevin McCarry at the U.S. Conference of Mayors (202-293-7330); and Cheryl Maynard at the American Planning Association (202-872-0611). Please feel free to call them if you have any questions.

Very truly yours,

Timothy J. Thompson, Staff Planner

cc: See attached list.



# Town of Goffstown

TOWN OFFICES

October 28, 1997

The Honorable John Sununu, Rep.  
1750 Elm Street  
Concord, N.H. 03104

RECEIVED  
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MANCHESTER, NH

Dear Representative Sununu:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings. The Town of Goffstown, like many N.H. communities, took special care in constructing its zoning regulations to not exceed its authority granted under the 1996 Telecommunications Act, but to be administered in accordance with the Act. We hope that you will do everything in your power to preserve local authority over these telecommunication structures as was intended by the Act.

**Cellular Towers - Radiation:** Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

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16 MAIN STREET • GOFFSTOWN, NH 03045

ASSESSING: (603) 497-3611 • BUILDING: (603) 497-3612 • FINANCE: (603) 497-3615

PLANNING: (603) 497-8991 • TAX: (603) 497-3614 • TOWN CLERK: (603) 497-3613

FAX: (603) 497-8993

Cellular Tower- Moratoria: Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

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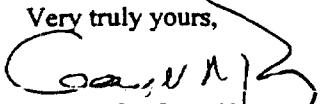
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Very truly yours,

  
Gossett McRae, Chairman  
Goffstown Planning Board

cc: Board of Selectmen  
Zoning Board of Adjustment